

# The Arkansas Register



**Volume XXVIII, Number 8**

**February 2005**

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State Capitol, Room 026  
Little Rock, AR 72201-1094**

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**Published by ..... *Secretary of State  
Charlie Daniels***

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# THE ARKANSAS REGISTER

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# ATTORNEY GENERAL OPINIONS

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## Opinion No.: 2004-306

Robinson, Charles L.  
*State Auditor*

**RE:** May a municipality or other political subdivision pay the individual legal expenses for an officer or official sued in their individual capacity, as opposed to their official capacity? **ANSWER:** This question must be considered in context to determine whether the officer was acting individually, outside his or her official capacity. The fact that the official was named individually is an insufficient basis for determining whether the attorney fees were improperly paid by the city. Additionally, this particular matter is currently the subject of a class action illegal exaction suit in the Phillips Co. Cir. Ct. (Sullivan v. City of West Helena). I must therefore decline to render an opinion, consonant with this office's long-standing policy with respect to matters pending in the courts.

## Opinion No.: 2004-335

Scroggin, Preston  
*State Representative*

**RE:** Do provisions of ACA 14-42-107(b)(1) and 14-77-108 apply towards public water or facilities boards? **ANSWER:** This question involving potential conflicts of interest proscriptions cannot be definitively answered without knowing the nature of the particular board or facility and the statutory authority under which it was created. See, e.g., A.C.A. 14-88-309 (board of municipal waterworks improvement district). See also generally A.C.A. 21-8-304 (conflict of interest statute applicable to public officers). Regarding private entities, it may be necessary to consult the bylaws to determine whether officers or employees are subject to any self-dealing restrictions.

## Opinion No.: 2004-339

Faris, Steve  
*State Senator*

**RE:** Are the provisions of A.C.A. 6-18-201(b)(2)(B) applicable to a person between the ages of 16 and 17 who withdrew from school and then did not enroll in any system for twelve (12) months? Would he or she then be eligible to enroll in adult education to pursue a GED without making the 8.5 or 450 score on the required test? **RESPONSE:** It is my opinion that, under the circumstances you have described, an individual aged 16 or 17 who is not in compliance with the mandatory attendance provisions by virtue of a year-long truancy may be eligible to enroll in adult education classes without making the minimum required scores referenced in A.C.A. 6-18-201(b)(2)(B). It is arguable, however, that rewarding an individual in violation of the attendance requirements could be seen as "absurd" and contrary to the legislative intent of the section. Legislative clarification may be warranted.

## Opinion No.: 2004-342

Rankin, Randy  
*State Representative*

**RE:** Can a full time employee of the county clerk's office serve as a paid election coordinator for the county election commission if the work is performed after normal business hours? **RESPONSE:** I cannot definitively opine on whether it is permissible for an employee of the county clerk to simultaneously serve as a paid election coordinator. Absent knowledge of the duties and responsibilities of an "election coordinator" or a statutory definition or description of such position and the nature of the employment at the county clerk's office, I cannot state whether the proposed employment would run afoul of constitutional, statutory, or common law prohibitions.

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# ATTORNEY GENERAL OPINIONS

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## Opinion No.: 2004-347

Evans, David  
*State Representative*

**RE:** Under Arkansas law, is it the buyer's responsibility to make certain that property taxes have been paid by the seller before purchasing a used vehicle? **RESPONSE:** In my opinion it is not the buyer's responsibility to ensure that property taxes have been paid on a used car in a private transaction beyond checking the certificate of title for liens properly attached pursuant to A.C.A. Secs. 27-14-801 through -807.

## Opinion No.: 2004-354

Jeffrey, Robert N.  
*State Representative*

**RE:** If a property owner submits a registration for the property tax credit under ACA 26-26-1118 before the deadline and the county assessor erroneously fails to credit the proper tax reduction, should the property tax credit be allowed after October 31 of the year after assessment in light of the language of ACA 26-26-1118(c)(3)? **Q2)** Does the above mentioned Code provision supercede ACA 26-35-901, which empowers the county court to remedy errors in assessment? **Q3)** If the tax credit should be allowed after October 31 of the year after assessment, what would be the proper procedure for applying for the tax credit? **RESPONSE:** 1) No. 2) Yes. 3) Unnecessary to answer.

## Opinion No.: 2004-355

Bradford, Jay  
*State Representative*

**RE:** In a city of the first class, can the salary of an elected official's position be reduced once a person has been elected to that position? **RESPONSE:** No,

the salary cannot be reduced "during the term" of the official, unless the official has requested it. See ACA 14-42-113. If your question inquires about a reduction after election, but before the term begins, the question is less clear and ACA 14-42-113 does not expressly prohibit this action. Cities should be cognizant of potential liability when passing any such ordinances, however.

## Opinion No.: 2004-356

Adams, Bob  
*State Representative*

**RE:** What authority does a landowner, park owner, or park manager have to block the movement of a repossessed mobile home claiming unsubstantiated debts such as rent and other charges? **ANSWER:** Unable to answer the question because it calls for general legal advice with respect to a largely unknown set of facts.

## Opinion No.: 2005-002

Gibbons, Davis  
*Pros Attorney, 5th Judicial District*

**RE:** Does the passage of Russellville Resolution 875 fall within the requirements of Ark. Const. art. 5, sec. 1, which appears to require two-thirds vote of all members elected to the city council to override the repeal of Russellville Ord. 870, which levied ad valorem property taxes within the City of Russellville? **Q2)** Is the action of the city council, either at the meeting held on Dec. 16 or the meeting held on Dec. 21, a valid action in light of the requirement of ACA 26-73-202 that the city council must act on or before the time fixed by law for the levying of county taxes? **Q3)** Under the above facts, should the County Clerk record the 0.4 mils for Fireman's Retirement and Relief and 0.4 mils for Policemen's Retirement and Relief on the tax books for 2004, as requested by the City of Russellville in its Dec. 22 letter? **ANSWER:** This matter is currently in litigation in the Pope County

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# ATTORNEY GENERAL OPINIONS

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Circuit Court (City of Russellville Police Pension and Retirement Board v. Gibson). Accordingly, no opinion is provided, consonant with the office's longstanding policy.

## **Opinion No.: 2005-003**

Trusty, Sharon  
*State Senator*

**RE:**What are the grounds for requesting an extension by a county judge to set the millage after November? Q2) What is the proper legislative action by a city council in setting the millage? Q3) Does the quorum court have the power or authority to change or alter the decision of the city council as it relates to the millage? Q4) Can a resolution set the millage? Q5) Can the quorum court set aside, ignore or change the millage set by the city council? Q6) When the city council votes on a millage resolution, does it require a two-thirds majority or a simple majority of the council for passage? Q7) When a millage resolution is referred to the voters under Ark. Const. amend. 7 and repealed by the voters, does a subsequent new millage resolution, which sets a millage rate different from the previous millage resolution that was referred, require a two-thirds majority or a simple majority of council for passage? Q8) Are there any procedures or actions that can be taken by the City of Russellville to ensure that the millage passed by the council on Dec. 6, 2004 and Dec. 21, 2004, will be levied for 2004 for 0.4 Police Pension and 0.4 Fire Pension? **ANSWER:** This matter is currently in litigation in the Pope County Circuit Court (City of Russellville Police Pension and Retirement Board v. Gibson). Accordingly, no opinion is provided, consonant with the office's longstanding policy.

## **Opinion No.: 2005-006**

Broadway, Shane  
*State Senator*

**RE:**If a first class city has ten members on the city

council and there is a request to suspend their rules, which takes a two-thirds vote, does it take seven votes to suspend the rules or does it take eight votes if you count the Mayor as a member (eight of eleven)? **RESPONSE:** It is my opinion that the law on this issue is currently unclear and can only be clarified by judicial interpretation of the applicable statutes, or by legislative clarification of those statutes. The statutes involved, the case law precedent, and the legislative intent of the statutes create a number of problematic results and I cannot opine on which interpretation a court would adopt in this situation.

## **Opinion No.: 2005-007**

Higginbotham, Steve  
*State Senator*

**RE:**Can a city council by resolution appropriate additional monies of over \$430,000 to a project that was originally funded by ordinance? **ANSWER:** Yes, unless the council is amending the ordinance when it appropriates the funds. Because this would require reviewing, and possibly interpreting, the ordinance, no definitive opinion is possible. As a general matter, the appropriation of funds by resolution is permissible. A.C.A. 14-55-204. But it is also true that generally an ordinance cannot be repealed, amended, or suspended by resolution, but instead this may only be accomplished by passing another ordinance. The specific issue regarding the appropriation in question must be decided by local counsel, and ultimately a court if that proves necessary.

## **Opinion No.: 2005-008**

Pickens, Mike  
*Commissioner, AR Insurance*

**RE:**Request for approval of proposed legislation created to enact the Interstate Insurance Product Regulation Compact under the Interlocal Cooperation Agreement Act (ACA 25-20-104). **ANSWER:** The Interlocal Cooperation Act does not apply to this

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# ATTORNEY GENERAL OPINIONS

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proposed Compact because there is no agreement between or among any public agencies, as contemplated by the Act. Rather, the States proper are automatically established as Compacting States upon their enactment of this "Compacting legislation." Compare 25-20-105. Accordingly, my approval is not required.

## **Opinion No.: 2005-010**

Lamoureux, Michael  
*State Representative*

**RE:**What are the grounds for requesting an extension by a county judge to set the millage after November? Q2) What is the proper legislative action by a city council in setting the millage? Q3) Does the quorum court have the power or authority to change or alter the decision of the city council as it relates to the millage? Q4) Can a resolution set the millage? Q5) Can the quorum court set aside, ignore or change the millage set by the city council? Q6) When the city council votes on a millage resolution, does it require a two-thirds majority or a simple majority of the council for passage? Q7) When a millage resolution is referred to the voters under Ark. Const. amend. 7 and repealed by the voters, does a subsequent new millage resolution, which sets a millage rate different from the previous millage resolution that was referred, require a two-thirds majority or a simple majority of council for passage? Q8) Are there any procedures or actions that can be taken by the City of Russellville to ensure that the millage passed by the council on Dec. 6,

2004 and Dec. 21, 2004, will be levied for 2004 for 0.4 Police Pension and 0.4 Fire Pension? **ANSWER:** This matter is currently in litigation in the Pope County Circuit Court (City of Russellville Police Pension and Retirement Board v. Gibson). Accordingly, no opinion is provided, consonant with the office's longstanding policy.

## **Opinion No.: 2005-011**

Haney, Alan  
*Captain, FSPD, Office of Prof Standards*

**RE:**Should the release of a police officer's personnel file, specifically any disciplinary actions received in the last year in response to a Freedom of Information Act (FOIA) request, be withheld because the officer believes the requested documents are of no public interest and personal in nature? **RESPONSE:** The tests for release of the records are detailed. No decision of the custodian is reflected. If there has been any termination or suspension proceeding within the applicable time period and the records formed a basis for that action, release of the records depends upon whether there is a compelling public interest in disclosure. That will depend upon all the pertinent facts.



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# ADOPTED RULES AND REGULATIONS

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## APPRAISER LICENSING & CERTIFICATION BOARD

Docket No.: 151.00.05--001  
Effective Date: 2/13/05  
Contact Person: Jim Martin  
Telephone: (501) 296-1843

### Board Rules and Regulations

## HUMAN SERVICES

### *Child Care & Early Childhood Education*

Docket No.: 016.22.04--004  
Effective Date: 7/1/05  
Contact Person: Thomas Sheppard  
Telephone: (501) 682-8763

### Child Care System Participant Agreement FORM DHS-9800

### *Medical Services*

Docket No.: 016.06.04--032  
Effective Date: 1/31/05  
Contact Person: Tom Show  
Telephone: (501) 682-2483

### State Plan Transmittal #2004-003

Docket No.: 016.06.04--049  
Effective Date: 1/31/05  
Contact Person: Betty Reed  
Telephone: (501) 682-8363

DMS-2004-O-2; DMS-2004-CA-4; DMS-2004-X-1; DMS-2004-II-1; DMS-2004-L-10; DMS-2004-KK-6; DMS-2004-R-8 -- Coverage of Mirena (IUD) as a Family Planning Benefit

Docket No.: 016.06.04--088  
Effective Date: 2/1/05  
Contact Person: Betty Reed  
Telephone: (501) 682-8363

Physician / Independent Lab / CRNA / Radiation Therapy Center -- Provider Manual Update Transmittal #93

## POLLUTION CONTROL & ECOLOGY

### *Administration*

Docket No.: 014.08.04--002  
Effective Date: 2/14/05  
Contact Person: Michael Bonds  
Telephone: (501) 682-0750

### Regulation No. 9 - Permit Fee Regulations

### *Solid Waste*

Docket No.: 014.03.04--003  
Effective Date: 2/17/05  
Contact Person: Anne Weinstein  
Telephone: (501) 682-0743

### Regulation No. 14 - Waste Tire Program





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# INSURANCE DEPARTMENT

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**04-034A**

*Final Cease and Desist Order*  
In the Matter of  
the Illegal Insurance Activities of  
**Robert Christian Ray**

**04-074**

*Order of Cancellation*  
In the Matter of  
the Certificate of Authority of  
**Lumber Mutual Insurance Company**

**04-075**

*Order of Cancellation*  
In the Matter of the  
Certificate of Authority of  
**North American Lumber Insurance Company**

**04-076**

*Adoption Order*  
In the Matter of the  
Report of Examination of  
**Ouachita Life Insurance Company**

**04-077**

*Adoption Order*  
In the Matter of the  
Report of Examination of  
**Stoneville Insurance Co. of Arkansas**

**04-078**

*Order*  
In the Matter of  
**Fred Holzhauer**

**04-079**

*Order of Continued Suspension*  
In the Matter of the  
Certificate of Authority of  
**First Citizens Life Insurance Company**

**04-080**

*Order of Suspension*  
In the Matter of the  
Certificate of Authority of  
**South Carolina Insurance Company**

**04-082**

*Order of Cancellation*  
In the Matter of the  
Certificate of Authority of  
**American Bonding Company**

**04-083**

*Cease and Desist Order*  
In the Matter of  
**Gregory Dale McClelland**

**04-084**

*Adoption Order*  
In the Matter of the  
Report of Examination of  
**National Insurance Underwriters**

**04-085**

*Order*  
In the Matter of  
**Arkansas Title Insurance Company**

**04-086**

*Consent Order*  
In the Matter of  
**Joshua David Smith**

**04-087**

*Adoption Order*  
In the Matter of Examination of  
**Co-Operative Life Insurance Company**

**04-088**

*Adoption Order*  
In the Matter of Examination of  
**Imperial Life Insurance Company**

**04-089**

*Order of Continued Suspension*  
In the Matter of the  
Certificate of Authority of  
**American Growers Insurance Company,  
a Nebraska Insurer**

**04-090**

*Consent Order*  
In the Matter of  
**American Home Assurance Company**

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# INSURANCE DEPARTMENT

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**04-091**

*Emergency License Suspension Order*

In the Matter of

**Keith Joseph Kinchen**

**04-092**

*Adoption Order*

In the Matter of the

Report of Examination of

**Cosmopolitan Life Insurance Company**

**04-093**

*Order of Suspension*

In the Matter of the

Certificate of Authority of

**Life and Health Insurance Company  
of America**

**04-094**

*Order*

In the Matter of the

Certificate of Authority of

**Frontier Pacific Insurance Company**

**04-095**

*Order*

In the Matter of the

Certificate of Authority of

**Western Indemnity Insurance Company**

**04-097**

*Consent Order*

In the Matter of

**National Motor Club of America, Inc.**

**05-002**

*Order*

In the Matter of

**Brokers National Life Insurance Company**

**05-001**

*Consent Order*

In the Matter of

**Medical Savings Insurance Company**



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# ORDERS AND NOTICES

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## LEGISLATIVE AUDIT December 29, 2004

Agency	Period Covered
Public Defender Commission (Private)	6/30/03
Public Defender Commission (Private)	6/30/02
Department of Finance and Administration - Revenue Division - Expenditures For Two-Year Period Ended	6/30/04
Arkansas Supreme Court	6/30/03
Department of Parks and Tourism	6/30/03
Department of Finance and Administration - Revenue Division - Office of Financial and Management Services - Cashier Section	6/30/04
Counseling Associates, Inc. (Private)	6/30/04
Western Arkansas Planning and Development District, Inc. (Private)	6/30/04
Department of Finance and Administration For the Two-Year Period Ended	6/30/04
Arkansas Spinal Cord Commission - For the Two-Year Period Ended	6/30/04
University of Arkansas Combined	6/30/04
Arkansas State University	6/30/04
University of Central Arkansas	6/30/04

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